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Counsel for Defendant The State Bar of California,
Hon. Judith Epstein, Hon. Madge Watai, Hon. Ronald Stovitz,
Hon. Patrice McElroy, Scott Drexel, Lawrence J. DalCerro,
Donald R. Steedman, Tammy Albertsen-Murray,
Erica L. Dennings, Michael Hummer, Jeffrey Bleich
and Sheldon Sloan

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Francis Fahy,

Plaintiff,

v.

Justices of the Supreme Court of the State of
California, et al.,

Defendants.

Case No. CV 08-2496-CW

**[PROPOSED] ORDER GRANTING
STATE BAR DEFENDANTS' MOTION
TO DISMISS**

Following review and consideration of the written and oral arguments of the parties and all documentation and evidence in the record regarding the Motion to Dismiss the Complaint filed by State Bar Defendants – The State Bar of California, Hon. Judith Epstein, Hon. Madge Watai, Hon. Ronald Stovitz, Hon. Patrice McElroy, Scott Drexel, Lawrence DalCerro, Donald R. Steedman, Tammy Albertsen-Murray, Erica L. Dennings, Michael Hummer, Jeffrey Bleich and Sheldon Sloan:

IT IS HEREBY ORDERED THAT:

1. Plaintiff Fahy's Complaint and each and every claim for relief therein is DISMISSED as to The State Bar of California, Hon. Judith Epstein, Hon. Madge Watai, Hon. Ronald Stovitz, Hon. Patrice McElroy, Scott Drexel, Lawrence DalCerro, Donald R. Steedman, Tammy Albertsen-Murray, Erica L. Dennings, Michael Hummer, Jeffrey Bleich and Sheldon Sloan (collectively the "State Bar Defendants"), WITHOUT LEAVE TO AMEND on the following grounds:
 - A. The Eleventh Amendment bars all of Plaintiff Fahy's claims against defendant The State Bar of California including all pendent state law claims. The Eleventh Amendment also bars all of Plaintiff Fahy's federal claims, any request for retroactive relief and all state damage and equitable claims against the individual State Bar defendants in their official capacities.
 - B. Plaintiff Fahy's claims are also jurisdictionally barred by the Rooker-Feldman doctrine as his claims arise solely from the California Supreme Court's decision to sanction him for ethical misconduct and the fact that this Complaint constitutes a de facto appeal from that state court judgment.
 - C. All State Bar Defendants are immune from liability for monetary damages. The federal common law doctrine of judicial immunity precludes money damages suits against The State Bar of California and its defendant officers and employees as such actions are based on alleged wrongdoing in the course of administering attorney discipline. See Hirsh v. Justices of Supreme Court of State of Cal., 67 F.3d 708, 714-715 (9th Cir. 1995).
 - D. Claim and issue preclusion also bar Plaintiff Fahy from relitigating his claims, as his claims were necessarily decided in a prior state proceeding brought before the California Supreme Court and Plaintiff had a full and fair opportunity to litigate his issues in the state proceeding, As a matter of

1 law, Plaintiff Fahy has failed to state a cognizable claim of due process
2 violations in the underlying state proceeding as he was provided a
3 meaningful opportunity to be heard in these proceedings, he has not
4 overcome the presumption of honesty and integrity of adjudicators, and he
5 has not established that the state proceedings were so infirm as to warrant
6 the federal court's intervention.

7 E. Plaintiff Fahy also fails to state a federal civil rights claim under 42 U.S.C.
8 section 1983 against the State Bar Defendants. The State Bar and its
9 officials are not "persons" subject to suit under section 1983 (Wills v.
10 Michigan Dept. State Police, 491 U.S. 58, 70-71), Moreover, Plaintiff has
11 failed to establish a deprivation of any federal rights.

12 F. Plaintiff Fahy fails to state a claim for malicious prosecution, civil rights
13 conspiracy under either 18 U.S.C. 241 or 42 U.S.C. 1985, or supervisory
14 liability. Moreover, Fahy has not stated a cognizable claim that the State
15 Bar's practice of counting a failure to demonstrate rehabilitation or atone
16 for wrongdoing as an aggravating disciplinary factor, constitutes a
17 violation of Article Six of the United States Constitution or that the State
18 Bar's inference that client trust accounts that fall below the amount
19 credited to a client will support a finding of misappropriation, constitutes
20 an unconstitutional irrebuttal presumption.

21 G. Plaintiff Fahy also fails to state a claim for his alleged state violations as
22 the State Bar Defendants retain both common law judicial immunity and
23 statutory immunity from suit, he has not alleged compliance with the
24 state's Government Claims Act, and he has not adequately alleged a
25 violation of either California's Unruh Act or California's Unfair
26 Competition Act.

27 H. Finally, Fahy's request for equitable relief is highly improper as he has
28 presented no well-pleaded facts to support his extraordinary requests and

1 granting the requested relief would unnecessarily interfere with the
2 California Supreme Court's and State Bar's ability to perform their official
3 duties.

- 4 2. For all the foregoing reasons, all claims raised by Plaintiff Fahy against all State
5 Bar Defendants are dismissed without leave to amend and the Clerk of the Court
6 is directed to enter judgment in the case in favor of all State Bar Defendants.

7
8 DATED: _____

Hon. Claudia Wilken

PROOF OF SERVICE BY MAIL

I, Joan Sundt, hereby declare: that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in the City and County of San Francisco, that my business address is The State Bar of California, 180 Howard Street, San Francisco, CA 94105.

On, September 5, 2008, following ordinary business practice, I placed for collection for mailing at the offices of the State Bar of California, 180 Howard Street, San Francisco, California 94105, one copy of [**PROPOSED**] ORDER GRANTING STATE BAR DEFENDANTS' MOTION TO DISMISS fully prepaid in an envelope addressed as follows:

Francis Fahy
259 Oak Street
San Francisco, CA 94102

I am readily familiar with the State Bar of California's practice for collection and processing correspondence for mailing with the U.S. Postal Service and, in the ordinary course of business, the correspondence would be deposited with the U.S. postal mail service on the day on which it is collected at the business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California this 5th day of September, 2008.

s/Joan Sundt